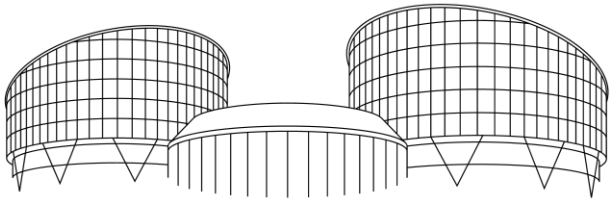

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF AQUILINA AND OTHERS v. MALTA

(Application no. 28040/08)

JUDGMENT

STRASBOURG

14 June 2011

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Aquilina and Others v. Malta,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Nicolas Bratza, *President,*
Sverre Erik Jebens,
Päivi Hirvelä,
Ledi Bianku,
Zdravka Kalaydjieva,
Nebojša Vučinić, *judges,*
David Scicluna, ad hoc *judge,*
and Lawrence Early, *Section Registrar,*

Having deliberated in private on 24 May 2011,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 28040/08) against the Republic of Malta lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by three Maltese nationals, Mr Victor Aquilina, Ms Sharon Spiteri and Dr Austin Bencini ("the applicants"), on 29 May 2008.

2. The applicants were represented by Dr Stefan Frendo, a lawyer practising in Valletta. The Maltese Government ("the Government") were represented by their Agent, Dr Silvio Camilleri, Attorney General.

3. The applicants alleged that they had suffered a breach of their right to freedom of expression.

4. On 12 October 2009 the President of the Fourth Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 1). In addition to the parties' submissions, observations were received from the third party who had brought the impugned proceedings against the applicants ("Dr A."), and to whom the President had given leave to intervene as an interested party (Article 36 § 2 of the Convention and Rule 61 § 3).

5. Mr V. De Gaetano, the judge elected in respect of Malta, was unable to sit in the case (Rule 28 of the Rules of Court). The President of the Chamber accordingly appointed Mr David Scicluna to sit as an *ad hoc* judge (Rule 29 § 1(b)).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants were born in 1942, 1973 and 1954 respectively and live in Malta. When the facts that gave rise to the complaint occurred, the first applicant was the editor of the newspaper "*The Times of Malta*", the second applicant was a court reporter for the said newspaper and the third applicant was the registered newspaper's printer.

A. Background of the case

7. On 20 June 1995 a bigamy case, in which the accused was represented by Dr A., was to be heard before the Court of Magistrates. Dr A. was called a number of times but he failed to appear. The accused explained that there had been trouble between them in view of requests for excessive fees which he was unable to pay. According to the second applicant, the presiding magistrate repeatedly expressed his intention in open court to find Dr A. in contempt of court. Indeed, in the chaotic atmosphere in the courtroom, the second applicant heard the magistrate find Dr A. to be in contempt of court. According to the second applicant, she subsequently attempted to verify this fact through the records of the proceedings, but both the magistrate and the court deputy registrar had already left their chambers. She therefore verified what she had heard with another reporter present in the courtroom. He confirmed her version.

8. A decision of the same date in the relevant bigamy proceedings referred to the fact that Dr A.'s client's request to replace his lawyer at that stage of the proceedings verged on contempt of court. However, in view of the circumstances as explained to the court, the case was adjourned.

9. On 21 June 1995, the *Times of Malta* newspaper published a report entitled 'Lawyer found in Contempt of Court'. It reported, *inter alia*, that Dr A. had been found guilty of contempt of court for failing to appear before a magistrate hearing the final stages of a bigamy case.

10. On the same day Dr A. called the second applicant and protested vigorously about the article. Subsequently, the second applicant proceeded to verify the information by checking the record of the proceedings. However, the relevant information was not registered therein. In consequence on 22 June 1995 the newspaper published a report entitled 'Lawyer Not Found in Contempt of Court' which reproduced the relevant record of the proceedings and stated that "any inconvenience caused to Dr A. is regretted".

B. Defamation proceedings

11. Nonetheless, on the same day, Dr A. brought civil proceedings for defamation under Part III of the Press Act (actions arising from press offences). The applicants pleaded, *inter alia*, that the publication was privileged under section 33 (d) of the Press Act (see Relevant domestic law below), that it was not libellous, that mitigation in accordance with section 28 (2) of the Press Act should be applied in view of the apology published on the following day and that the third applicant had not read the report prior to its publication (see Relevant domestic law).

12. By a decision of 13 June 1997, the court, while acknowledging that the record of the case did not cover the entire proceedings, allowed the applicants to present evidence. On 24 February 1998, in his testimony, the prosecutor in the bigamy case explained that Dr A. had not appeared at the hearing. The prosecutor related that he had tried to keep the magistrate calm and was nearly found guilty of contempt himself because he was playing defence lawyer. The prosecutor stated that, at that moment, the magistrate dictated a minute, which he thought was directed towards him, that if he opened his mouth he would himself be found in contempt of court. He had also understood, at that moment, that the magistrate found Dr A. to be in contempt of court because he did not appear. The prosecutor reiterated that, at that moment, the magistrate was very angry and that he understood that he had found Dr A. guilty of contempt. When asked whether the impugned article reflected what really went on in the court room, the prosecutor replied "effectively it reflects what happened in court in short". He continued to say that while much more was said in the court room, at that time, the phrase in the article "the magistrate found Dr A. to be in contempt of court" reflected the impression he had had as to what effectively happened at that moment in time.

13. On 5 November 1999 the Civil Court found against the applicants. It rejected the applicants' first two above-mentioned defence pleas. In its presentation of the facts the court recalled the above mentioned evidence. It, however, found that the article did not coincide properly with what had happened, in particular in its heading, since, as appeared clearly from the minutes of the hearing, it was not true that the plaintiff was found guilty of contempt of court. Thus, the publication was not a fair report of the proceedings. Consequently, it could not be considered privileged. The court went on to note that the defendants tried to diminish their blame for their incorrect reporting by proving that the hearing had been chaotic. It was for this reason that the journalist misunderstood what had happened. The defendants had further shown that the prosecutor too had misunderstood what had happened, as he had also understood that the plaintiff had been found guilty of contempt. In the court's view, however, this merely highlighted the need for the reporter to verify her information. The

reporter's interest in publishing information was legitimate. However, it could not be more important than someone's reputation. The statement that Dr A. had been found to be in contempt of court surely harmed his reputation as it incited the supposition that he had not fulfilled his duties as a lawyer. Thus, it found the statement in question to be defamatory and taking account of the fact that they had published an apology and that the printer had not read the report at issue, it ordered the applicants to pay, *in solidum*, 300 Maltese liras (MTL – approximately 720 euros (EUR)) in damages with interest and costs, but limiting the third applicant's responsibility to MTL 150 (approximately EUR 360) plus interest.

14. The applicants appealed and Dr A. cross-appealed.

15. On 27 June 2003 the Court of Appeal rejected both appeals, reiterating that the statement had not reflected the truth and adding that when the statement was in itself injurious, mischievous intent ("*animus injurandi*") was presumed.

C. Constitutional proceedings

16. On 31 May 2004 the applicants brought constitutional redress proceedings, claiming that they had published a faithful version of what went on in the courtroom and that the above-mentioned judgments breached their right to freedom of expression. Despite the applicants' opposition, Dr A. was allowed to intervene in the proceedings.

17. On 24 May 2007 the Civil Court (First Hall) found against the applicants.

18. While extensively reiterating the principles derived from the Court's case-law, the Civil Court noted that during the defamation proceedings it was established that the fact reported had not been true, and that the applicants had a duty to verify the relevant information. Upon examination of the record of the defamation proceedings, the Civil Court in its constitutional jurisdiction concluded that the domestic courts' conclusions had not been unreasonable. The fact that the applicants had published an apology was of little relevance, if any, if the information published in the first place was false. In such circumstances it was not unreasonable for the courts to protect Dr A.'s reputation and limit the applicants' right to freedom of expression.

19. On 4 June 2007 the applicants appealed. On 16 January 2008 the Constitutional Court rejected the applicants' appeal. It held that a journalist had to assume responsibility for what he or she decided to publish. If an item was presented as fact then the journalist must be able to prove it. Even if acting in good faith, the press may only publish facts and not what appears to it to be fact. Had the second applicant verified the record of the proceedings she could have avoided misinforming the public. Citing the Court's case-law, the Constitutional Court held that, while it was not for

them to establish the veracity of the facts at issue, the domestic courts' judgments in favour of Dr A. had not infringed the applicants' rights under Article 10. The public had a duty to be informed of true and verified facts, in good faith, as was to be expected from professional journalism.

II. RELEVANT DOMESTIC LAW

20. Section 28 of the Press Act, Chapter 248 of the Laws of Malta, relates to damages for defamatory libel. Subsection 2, in so far as relevant, reads as follows:

> "In any case to which this article applies, the defendant may, in mitigation of damages, prove that he made or offered to make an apology to the plaintiff for such defamation before the commencement of the action for damages or, as soon afterwards as he had an opportunity of doing so where the action commenced before there was an opportunity of making or offering such apology:
>
> Provided that the defendant shall not be allowed to adduce such proof in mitigation of damages if he has raised a plea of justification in terms of section 12."

21. According to section 33 (d) of the Press Act, in so far as relevant, the following are privileged publications, in that no action shall lie in respect of them:

> "Publications of reports of any proceedings in a court of justice in Malta provided such reports are fair reports of the proceedings and the publication of such reports or proceedings is not prohibited by law or by the court..."

22. Article 518 of the Criminal Code, Chapter 9 of the Laws of Malta, reads as follows:

> "The acts and documents of the courts of criminal justice shall not be open to inspection, nor shall copies thereof be given, without the special permission of the court, except by or to the Attorney General, by or to the parties concerned or by or to any advocate or legal procurator authorised by such parties; but any act, which is pronounced in open court, shall be open to inspection by any person, and copies thereof may be given on payment of the usual fee:
>
> Provided that a *procès-verbal* and any depositions and documents filed therewith shall be open to inspection, and copies thereof shall be given, only at the discretion of the Attorney General and on payment of such fees as may be prescribed by the Minister responsible for justice ...."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

23. The applicants complained that the domestic courts' judgments finding them guilty of defamation and fining them breached their rights under Article 10 of the Convention, which reads as follows:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

24. The Government contested that argument.

A. Admissibility

25. The Government did not contest the admissibility of the application.

26. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The applicants' submissions

27. The applicants complained that the judgment of the Civil Court in its ordinary jurisdiction and subsequently that of the Court of Appeal violated their right to freedom of expression. They claimed that the fact that the second applicant actually heard the presiding magistrate find Dr A. guilty of contempt of court gave her the right to publish this as a fact which reflected the reality of what happened on the day of the hearing of the bigamy case. Thus, the subsequent award of civil damages which the applicants were ordered to pay constituted an interference which was not necessary in a democratic society.

28. The relevant judgments had been based on the fact that the records of the proceedings did not mention the contempt charge, notwithstanding that such records did not reproduce the entirety of what happened in court proceedings. Limiting publications to the information contained in such records would in itself be an interference, especially since the records of criminal cases were not as a rule available to reporters.

29. They argued that the Constitutional Court judgment had acknowledged the ordinary courts' reasoning, ignoring the fact that journalists generally report what appears to have happened, that the second applicant had verified her version with another reporter, that this was corroborated by a prosecuting officer, and that she had acted in good faith, in line with accepted journalistic practices.

30. The article published the following day comprised the entire records of the case so that readers could have a full picture of what had happened, namely that Dr A. had been orally sanctioned but that this was not reflected in the record of the proceedings. The Constitutional Court had inappropriately expected the second applicant to know the legal procedures regarding contempt of court and to second-guess what she had heard. Moreover, the applicants had proved that the words “contempt of court” had been used in the hearing in respect of Dr A. and the fact that no proceedings ensued could not amount to a finding that the original statement was false, with the repercussions that ensued for the applicants. The Constitutional Court itself had acknowledged that the proceedings were not confined to what was reproduced in the minutes. Thus, their conclusion that the statement was false was untenable. The second applicant was solely reporting in the article what had happened in the courtroom at the relevant time. Her understanding of the event was further confirmed by a colleague, as was often done in practice. She could not have known at the time that the Maltese courts would not follow up the charge.

31. The applicants further submitted that eyewitness as opposed to hearsay or second-hand information was not subject to verification and did not require confirmation. The present case amounted to pure and simple journalistic reporting of public events, such as, in the case at issue, court proceedings, as they occurred, and not investigative journalism.

2. The Government's submissions

32. The Government submitted that the interference with the applicants' rights under Article 10 was in accordance with the law, namely the Press Act and was necessary in a democratic society.

33. The second applicant had ignored her journalistic responsibility and failed to verify, by consulting the relevant court records, the accuracy of what she thought she had heard. She limited herself to verifying the alleged facts with a colleague, which according to the Government further proved her uncertainty about the events. Since, in reality, Dr A. had never been

found to be in contempt of court, her publication, amounting to a statement of fact and not a value judgment, proved to be false. The Government clarified that any pronouncement that Mr X. had been found guilty of contempt of court would have been mentioned in the records of the case, which is the best method of verification. Moreover, the applicants had access to the records (Article 518 of the Criminal Code). Indeed, the second applicant obtained these records the following day. The applicants consequently published an apology acknowledging that the statement was not true. Its falsity was further confirmed by the domestic courts. Thus, it was pointless to continue alleging that the initial statement was true. It was clear that the second applicant's erroneous allegations were only a result of her reluctance to wait to verify her information in order to publish before her competitors. Moreover, the statement at issue was not one in the general interest since it concerned a private individual.

34. In consequence, the Maltese courts had maintained the requisite balance between Dr A.'s undoubted interest in protecting his professional reputation and the rights of the applicants. While finding the report to be defamatory they had reduced the amount of damages in view of the newspaper's apology and rectification of facts. In consequence, it could not be said that the domestic courts' reasoning was not relevant and sufficient and that the interference was not necessary in a democratic society for the protection of the rights of others.

3. The third party intervener

35. The third party intervener, Dr A., submitted that the fact that the magistrate and registrar had already left the courtroom proved that the second applicant had procrastinated in verifying her allegations. The witness produced in court had been young and inexperienced and the domestic courts dismissed the evidence. The fact remained that he had not been found to be in contempt of court. It should have been logical for the journalist that a person could not be found guilty of contempt of court in his absence and without a penalty being imposed.

36. In view of the possible repercussions on his reputation, and the applicants' failure in their duty and responsibilities, the court's well-reasoned decision ordering the applicants to pay him civil damages had been proportionate and necessary in a democratic society.

4. The Court's assessment

37. The Court notes that it is common ground between the parties that the judgments pronounced in the defamation action constituted an interference with the applicants' right to freedom of expression as protected by Article 10 § 1. The Court reiterates that an interference breaches Article 10 unless it was “prescribed by law”, pursued one or more of the legitimate

aims referred to in Article 10 § 2 and was "necessary in a democratic society" to attain such aim or aims (see *Times Newspapers Ltd v. United Kingdom (nos. 1 and 2)*, no. 3002/03 and 23676/03, § 37, ECHR 2009-...).

(a) Prescribed by law

38. It is not contested that the interference was prescribed by law, namely the Press Act.

(b) Legitimate aim

39. The Court considers that the interference pursued the legitimate aim of protecting the reputation or rights of others, within the meaning of Article 10 § 2.

(c) Necessary in a democratic society

i. General principles

40. The test of "necessity in a democratic society" requires the Court to determine whether the interference complained of corresponded to a "pressing social need". The Contracting States have a certain margin of appreciation in assessing whether such a need exists, but it goes hand in hand with European supervision, embracing both the legislation and the decisions applying it, even those given by an independent court. The Court is therefore empowered to give the final ruling on whether a "restriction" is reconcilable with freedom of expression as protected by Article 10 (see, among many other authorities, *Perna v. Italy* [GC], no. 48898/99, § 39, ECHR 2003-V, and *Association Ekin v. France*, no. 39288/98, § 56, ECHR 2001-VIII).

41. The Court's task in exercising its supervisory function is not to take the place of the competent domestic courts but rather to review under Article 10 the decisions they have taken pursuant to their power of appreciation (see *Fressoz and Roire v. France* [GC], no. 29183/95, § 45, ECHR 1999-I). In particular, the Court must determine whether the reasons adduced by the national authorities to justify the interference were "relevant and sufficient" and whether the measure taken was "proportionate to the legitimate aims pursued" (see *Chauvy and Others v. France*, no. 64915/01, § 70, ECHR 2004-VI). In doing so, the Court has to satisfy itself that the national authorities, basing themselves on an acceptable assessment of the relevant facts, applied standards which were in conformity with the principles embodied in Article 10 (see, among many other authorities, *Zana v. Turkey*, 25 November 1997, *Reports* 1997-VII, pp. 2547-48, § 51).

42. In order to assess the justification of an impugned statement, a distinction needs to be made between statements of fact and value judgments in that, while the existence of facts can be demonstrated, the truth

of value judgments is not susceptible of proof. The classification of a statement as a fact or as a value judgment is a matter which in the first place falls within the margin of appreciation of the national authorities, in particular the domestic courts (see *Prager and Oberschlick v. Austria*, 26 April 1995, § 36, Series A no. 313).

43. A constant thread running through the Court's case-law is the insistence on the essential role of a free press in ensuring the proper functioning of a democratic society. Although the press must not overstep certain bounds, regarding in particular protection of the reputation and rights of others, its duty is nevertheless to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest, including those relating to the administration of justice (see *De Haes and Gijsels v. Belgium*, judgment of 24 February 1997, *Reports* 1997-I, pp. 233-34, § 37). Not only does the press have the task of imparting such information and ideas; the public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role of "public watchdog" (see *Thorgeir Thorgeirson v. Iceland*, judgment of 25 June 1992, Series A no. 239, p. 27, § 63, and Bladet Tromsø *and Stensaas v. Norway* [GC], no. 21980/93, § 62, ECHR 1999-III).

44. The Court reiterates that the protection of the right of journalists to impart information on issues of general interest requires that they should act in good faith and on an accurate factual basis and provide "reliable and precise" information in accordance with the ethics of journalism (see, for example, *Fressoz and Roire*, § 54; Bladet Tromsø *and Stensaas*, § 58, and *Prager and Oberschlick*, § 37, all cited above). Under the terms of paragraph 2 of Article 10 of the Convention, freedom of expression carries with it "duties and responsibilities", which also apply to the media. Moreover, these "duties and responsibilities" are liable to assume significance when there is a question of attacking the reputation of a named individual and infringing the "rights of others". Thus, special grounds are required before the media can be dispensed from their ordinary obligation to verify factual statements that are defamatory of private individuals. Whether such grounds exist depends in particular on the nature and degree of the defamation in question and the extent to which the media can reasonably regard their sources as reliable with respect to the allegations (see, among other authorities, *McVicar v. the United Kingdom*, no. 46311/99, § 84, ECHR 2002-III, and Bladet Tromsø *and Stensaas*, cited above, § 66).

ii. Application to the present case

45. In the present case, the applicants were found to have defamed a named individual. The domestic courts considered the impugned article as containing a factual allegation. The Court agrees with the domestic courts that the applicants, by entitling the impugned article "Lawyer found in

Contempt of Court" gave readers the impression that it was a fact that Dr A. had been found guilty of contempt of court.

46. The Court further notes that a lawyer's behaviour in the exercise of his profession, particularly during court proceedings held in public, is a matter of public interest. In this context, whether the second applicant had the means to verify the facts and whether she abided by her duty of responsible reporting are relevant factors.

47. The Court observes that the allegation of fact made by the applicants was susceptible of proof and that the applicants were indeed allowed to claim this defence and present evidence to this effect (see, conversely, *Castells v. Spain*, 23 April 1992, § 47, Series A no. 236). However, the domestic courts considered that Dr A. had not in fact been found guilty of contempt of court. The Court notes that the second applicant drew her conclusion from what she had seen and heard, namely the statements of the magistrate during the court proceedings, which it has not been disputed were chaotic. It observes that the presiding magistrate had at least stated that the circumstances verged on contempt of court. Finding a lawyer in contempt of court was an action within his power in such circumstances and was not an unreasonable response in view of defence counsel's failure to appear on the appointed day and without having informed the court that he would not attend the hearing. Moreover, two individuals present in the court room heard, independently of each other, the magistrate find Dr A. to be in contempt of court. Indeed, the prosecutor present in the same courtroom confirmed the second applicant's version on oath during the defamation proceedings. More importantly, during the defamation proceedings not a single witness was produced to assert that the magistrate had not found Dr A. to be in contempt of court. Dr A. himself had not presented any such evidence and since he was not present at the hearing, he was in no position to contradict that statement. Indeed, all the evidence heard, apart from the court record, clearly suggested that Dr A. had been found to be in contempt of court.

48. In the instant case, the record of the proceedings did not mention that Dr A. was found to be in contempt of court. Records of proceedings are usually brief minutes of the *res gestae*, and as acknowledged by the domestic courts (see paragraph 12 above) they do not contain a detailed record of all that takes place during proceedings. Thus, while such record is certainly important for the purposes of a court case, it cannot be considered the sole source of truth for other purposes, including court reporting. To limit court reporting to facts reproduced in the records of proceedings, and to bar reports based on what a journalist has heard and seen with his or her own eyes and ears, as corroborated by others, would be an unacceptable restriction of freedom of expression and the free flow of information. While there may be a presumption that the official record of court proceedings is complete and accurate, such a presumption may be rebutted by other

evidence of what occurred during the course of the proceedings. It follows that in a conflict between the records of the case and the sworn evidence of witnesses who have no personal interest in the case, a court should not discard the sworn evidence a priori. This is even more true where, as here, there is no apparent conflict since the record of the proceedings is silent on the matter in issue.

49. In the present case, the Court attaches importance to the fact that, even if not reflected in the record of the proceedings, the second applicant's contention that the magistrate had found Dr A to be in contempt of court was expressly confirmed by the evidence of the prosecutor in the bigamy case, who stated that the second applicant's article was a true summary of what had occurred at the hearing. The Court is struck by the fact that, although this evidence was plainly relevant and came from an independent eye-witness to the events in question, little or no attention appears to have been paid to it by the Civil Court in the defamation proceedings. In particular, there is no indication in the judgment of the Civil Court as to whether the prosecutor was found by the court to be an unreliable or unconvincing witness. The Court considers that to require the applicants to prove the truth of the statements made in the article, while at the same time disregarding, or giving no reasons for rejecting, the evidence called by the applicants to establish their truth, is not consistent with the requirements of Article 10 of the Convention (see, *mutatis mutandis*, *Flux and Samson v. Moldova*, no. 28700/03, § 25, 23 October 2007, and *Jerusalem v. Austria*, no. 26958/95, § 45-46, ECHR 2001-II).

50. Moreover, the Court finds no reason to doubt the second applicant's account that she attempted to verify her perception of what had taken place in the court room (see paragraph 7 above). For the Court, such a course of action would be entirely in line with best journalistic practices. In the circumstances of the present case, the second applicant could not reasonably have been expected to take any further steps, especially since news is a perishable commodity and to delay its publication, even for a short period, may well deprive it of all its value and interest (see, for example, Observer *and* Guardian *v. the United Kingdom*, 26 November 1991, § 60, Series A no. 216; and *Association Ekin v. France*, no. 39288/98, § 56, ECHR 2001-VIII). The Court further notes that the applicants published an apology (see paragraph 10 *in fine*) two days after the publication of the impugned article. Bearing in mind these considerations, the Court finds that the second applicant had at all times acted in good faith and in accordance with her duty of responsible reporting (see, *mutatis mutandis*, *Tønsbergs Blad A.S. and Haukom v. Norway*, no. 510/04, § 101, ECHR 2007-III).

51. Having regard to the foregoing, the Court considers that in taking their decisions the domestic courts overstepped their margin of appreciation and the judgments against the applicants and the ensuing award of damages were disproportionate to the legitimate aim pursued. It follows that the

interference with the applicants' exercise of their right to freedom of expression cannot be regarded as necessary in a democratic society for the protection of the reputation and rights of others.

52. There has accordingly been a violation of Article 10 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

53. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

54. Assuming that a judgment finding a violation of Article 10 in the present case would render the domestic court judgment unenforceable, the applicants claimed EUR 11,646.87 in respect of non-pecuniary damage. They requested that this sum be apportioned among the applicants, namely 50% of the amount to the second applicant who bore the greatest damage and the remainder between the first and third applicant.

55. The Government submitted that a finding of a violation would constitute sufficient just satisfaction. In any case, the amounts claimed were unjustified and exaggerated.

56. The Court reiterates that under its case-law a sum paid as reparation for damage is only recoverable if a causal link between the violation of the Convention and the damage sustained is established. Thus, in the present case, the award of damages which the applicants have to pay to Dr A. pursuant to the domestic court decision could be taken into account (see, *mutatis mutandis*, *Thoma v. Luxembourg*, no. 38432/97, § 71, ECHR 2001-III). However, the Court notes that the applicants have not made a claim in this respect. The Court considers, however, that the applicants have suffered non-pecuniary damage as a result of the domestic courts' judgments, which were incompatible with Convention principles. The damage cannot be sufficiently compensated by a finding of a violation. The particular amount claimed by the applicant is nevertheless excessive. Making its assessment on an equitable basis, the Court awards the applicants EUR 4,000, jointly, plus any tax that may be chargeable on that amount.

B. Costs and expenses

57. The applicants also claimed EUR 2,995 for the costs and expenses incurred before the domestic courts (as per attached bill of costs) and EUR 4,500 for those incurred before the Court.

58. The Government did not comment on these claims.

59. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, notably the fact that the applicants did not submit any evidence substantiating the claims incurred in the Convention proceedings, the Court considers it reasonable to award the sum of EUR 4,000 covering costs under all heads.

C. Default interest

60. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 10 of the Convention;

3. *Holds*

(a) that the respondent State is to pay the applicants, jointly, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention:

(i) EUR 4,000 (four thousand euros) in respect of non-pecuniary damage;

(ii) EUR 4,000 (four thousand euros) in respect of costs and expenses;

(iii) plus any tax that may be chargeable on the above amounts;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 14 June 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early Registrar	Nicolas Bratza President